

803 KAR 30:010. Special fund assessments.

RELATES TO: KRS 49.220, 342.0011, 342.122, 342.1221, 342.1222, 342.1223, 342.1231, 342.340, 342.650, 30 U.S.C. 901-945, 33 U.S.C. 901-950

STATUTORY AUTHORITY: KRS 342.1223(3)(f)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.1223(3)(f) authorizes the Kentucky Workers' Compensation Funding Commission (KWCFC) to promulgate administrative regulations. KRS 342.1223(2)(g) requires the KWCFC to conduct periodic audits of all entities subject to the special fund assessments imposed by KRS 342.122. This administrative regulation establishes the procedures and forms to be used to report and remit special fund assessments, identifies audit expenses, establishes procedures for collection of assessments and expenses, and defines penalty and interest procedures.

Section 1. Definitions.

(1) "Actual physical receipt by the KWCFC" means:

(a) Physical delivery to the Funding Commission office prior to January 1, 2020; or

(b) Electronic filing of the Quarterly Premiums Report, accompanied by:

1. Electronic fund transfer of an assessment due to the KWCFC account; or

2. Prior to January 1, 2020, physical delivery of payment to the office of the Funding Commission.

(2) "Assessment Payer" is defined by KRS 342.1231(10).

(3) "Board" means, unless otherwise specified, the Board of Directors of the Kentucky Workers' Compensation Funding Commission.

(4) "Engaged in severance or processing of coal" is defined by KRS 342.0011(23)(b).

(5) "Insurance carrier" is defined by KRS 342.0011(22).

(6) "Insurance company" means a company authorized to do business in the Commonwealth writing workers' compensation insurance coverage and includes the Employers Mutual Insurance Authority.

(7) "Insurance policy", for an insurance company or group self-insurer, is defined by KRS 342.0011(26).

(8) "KWCFC" or "Funding Commission" means the Kentucky Workers' Compensation Funding Commission.

(9) "Premium", for each employer carrying one's own risk pursuant to KRS 342.340(1), is defined by KRS 342.0011(28).

(10) "Premium", for every group of self-insurers, is defined by KRS 342.0011(24).

(11) "Premium", for insurance companies, is defined by KRS 342.0011(25)(c).

(12) "Premiums received":

(a) For group self-insurers, including group self-insurers electing to report premiums and have special fund assessments computed in the same manner as insurance companies, means all assessments levied on its members by a group or contributed to it by the members, including premiums charged off or deferred;

(b) For insurance companies, is defined by KRS 342.0011(25)(a).

(13) "Return premiums", for insurance companies, is defined by KRS 342.0011(25)(d).

(14) "Self-insurance year", for a group self-insurer, is defined by KRS 342.0011(27).

(15) "Severance or processing of coal" is defined by KRS 342.0011(23)(a).

(16) "SIC code" is defined by KRS 342.0011(29) and is now known as the NAICS code.

(17) "Special fund assessment" means the assessment established in KRS 342.122.

Section 2. Special Fund Assessment.

(1) Special fund assessment shall be imposed upon all premiums, including any premiums for coverage under the Black Lung Compensation Insurance Fund, 30 U.S.C. 901-945, for an insurance policy providing Kentucky workers' compensation coverage, except special fund assessments shall not be imposed upon premiums for the following:

- (a) Excess, reinsurance, or coverage under the Black Lung Compensation Insurance Fund, 30 U.S.C. 901-945, for group or individual self-insurers;
- (b) Contracts between insurance carriers and reinsurers;
- (c) Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901-950 coverage defined as USL&H Manual Premium +/- the premium applicable of all rates/factors/and fixed expenses; and
- (d) Coverage solely for persons for whom a rule of liability for injury or death is provided by the laws of the United States.

(2) For an insurance policy with provisions for deductibles effective on or after January 1, 1995, the premium upon which a special fund assessment is imposed for insurance companies shall not include schedule rating modifications, debits, or credits.

(3) Insurance companies shall report and pay assessments every calendar quarter on premiums received for the quarter reported at the rate in effect on the effective date of the policy.

(4)(a) Insurance companies shall remit special fund assessments or take credit for returned special fund assessments on premiums received or return premiums at the rate in effect on the effective date of the policy, regardless of the date the premium is actually received or returned.

(b) Additional premiums received for policies with effective dates prior to November 1, 1987 shall be assessed at the rates of 23.30 percent for all employers and 40.00 percent additional for employers engaged in severance or processing of coal.

(5)(a) Group self-insurers shall report and pay special fund assessments every calendar quarter on premiums received or return premiums at the rate in effect on the effective date of the group self-insurance year for which the premium was received or returned, regardless of the date the premium is actually levied, received, or returned.

(b) A premium shall include any member assessments or contributions used to purchase excess insurance, reinsurance, or Black Lung coverage.

(6) Special fund assessment shall be imposed upon additional premiums received by group self-insurers for self-insurance years effective prior to October 26, 1987 at the rates of 23.30 percent for all employers and 40.00 percent additional for employers engaged in severance or processing of coal.

(7) Group self-insurers shall take credit for the return of special fund assessments at the rate in effect on the effective date of the group self-insurance year for which premiums are returned.

(8) Group self-insurers may elect to report their premiums and have their special fund assessments computed in the same manner as insurance companies, in accordance with KRS 342.122(4).

(a) Election by an existing group self-insurer to report in the same manner as an insurance company shall be made in writing to the Kentucky Workers' Compensation Funding Commission.

(b) Election by newly formed group self-insurers to report in the same manner as an insurance company shall be made in writing to the Kentucky Workers' Compensation Funding Commission within sixty (60) days following the effective date of the group's initial self-insurance year.

(c) Failure of a group self-insurer to elect in writing to report in the same manner as an insurance company in accordance with paragraphs (a) and (b) of this subsection shall constitute an election to report and pay special fund assessments as a group self-insurer in accordance

with subsections (5), (6), and (7) of this section.

(d) The election made in accordance with paragraph (a), (b), or (c) of this subsection may not be rescinded for at least ten (10) years, in accordance with the provisions of KRS 342.122(4).

(e) Group self-insurers electing to report premiums and have special fund assessments computed in the same manner as insurance companies shall report and pay assessments every calendar quarter on premiums received for the quarter reported at the rate in effect on the annual effective date of the individual member's policy year.

(f) 1. Group self-insurers electing to report premiums and have special fund assessments computed in the same manner as insurance companies shall remit special fund assessments or take credit for returned special fund assessments on premiums received or return premiums at the rate in effect on the effective date of the individual member's policy year, regardless of the date the premium is actually received or returned.

2. Additional premiums received for policy years with effective dates prior to November 1, 1987 shall be assessed at the rates of 23.30 percent for all employers and 40.00 percent additional for employers engaged in severance or processing of coal.

(9) (a) Employers self-insuring Kentucky workers' compensation liability under the provisions of KRS 342.340 shall pay special fund assessments on the premium calculated by the Commissioner of the Department of Workers' Claims in accordance with KRS 342.0011(28).

(b) One-fourth (1/4) of the total annual calculated premium shall be reported and the special fund assessments shall be paid to the KWCFC each calendar quarter.

(10) The premium calculated by the Commissioner of the Department of Workers' Claims for individual self-insurers shall be assessed at the rates in effect on January 1 of the calendar year for which the premium is calculated.

(11)(a) Special fund assessments shall be paid quarterly, in accordance with KRS 342.122(2).

(b) Prior to January 1, 2020, if the assessment due date falls on a weekend (Saturday or Sunday), assessments due and payable, if not postmarked in accordance with KRS 342.122(2), shall be sent to the KWCFC in advance so as to be received by the KWCFC no later than close of business, on the first business day immediately following the weekend due date. After January 1, 2020, the assessment shall be due and payable electronically in accordance with KRS 342.122 (2)(b).

(12)(a) If an insurance carrier collects from an insured a special fund assessment at a rate in excess of that established by KRS 342.122 and this administrative regulation, or collects for any reason from an insured an amount in excess of that established by KRS 342.122 and this administrative regulation, the insurance carrier shall refund the excess to the insured in accordance with KRS 342.1231(9) and (10).

(b) If, after good faith efforts, the excess cannot be returned to the insured in accordance with KRS 342.1231(9) and (10), the excess shall be remitted to the KWCFC.

(c) An insurance carrier shall not retain special fund assessments in excess of those established by KRS 342.122 and this administrative regulation.

(13) The assessment payer shall be notified if proof of refund to insured has not been timely provided or escheated to the KWCFC per KRS 342.1231.

(14) When documentation is received by the KWCFC providing refund to insured information:

(a) Penalty and interest shall be calculated; and

(b) The assessment payer shall be notified of the additional amount due.

Section 3. Penalty and Interest.

(1) The KWCFC Board or its designee may waive part or all of the penalty, but not the interest, in accordance with KRS 342.1221.

(a) The designee may waive part or all of the penalty, if under \$5,000, in the absence of the KWCFC Board of Directors.

(b) If an assessment payer is not satisfied with the decision made by the designee, an appeal may be submitted within thirty (30) days from the date of mailing of the decision to the Board of Directors of the KWCFC for final ruling.

(c) If an assessment payer is not satisfied with the decision made by the KWCFC Board of Directors, an appeal may be submitted to the Kentucky Claims Commission within thirty (30) days from the date of mailing of the final ruling.

(2) The assessment payer shall receive notification of past due additional assessment, penalty and interest, and expenses. When payment is received by the KWCFC:

(a) Penalty and interest shall be calculated; and

(b) Notification shall be sent to the assessment payer of the additional amount due.

Section 4. Refunds.

(1) Insurance carriers may take credit for the return of special fund assessments on their quarterly premiums reports, if:

(a) The credit is taken by the insurance carrier within four (4) years of the date the insurance carrier returns the assessment to the employer; and

(b) The assessment is returned to the employer in addition to the returned premium.

(2)(a) Assessment payers may submit a claim in writing for a refund of special fund assessments not taken as a credit on the quarterly premiums report.

(b) The assessment payer shall submit with the claim all documents required to support the claim.

(3) All refunds, including those made in accordance with subsection (2) of this section, shall be subject to audit by the Funding Commission.

Section 5. Audits; General.

(1) In accordance with KRS 342.1223(2)(g), the Kentucky Workers' Compensation Funding Commission shall conduct audits independently or in cooperation with the Labor Cabinet or the Department of Revenue of all entities subject to the special fund assessments established by KRS 342.122.

(2) Until the initial audit has been completed, all records supporting reported premiums and special fund assessments, including refunds and credits, shall be maintained by the assessment payer per KRS 342.1231(8).

(3) All necessary and reasonable expenses incurred by the KWCFC in conducting an audit shall be reimbursed to the KWCFC by the assessment payer audited.

(4) Expenses to be reimbursed shall include:

(a) Travel Expenses:

1. Meals;
2. Lodging;
3. Transportation;
4. Parking; and
5. Incidentals; and

(b) Labor expenses:

1. Preparation for the audit;
2. Travel;
3. Finalizing of the audit; and

4. Preparation of written reports and correspondence.
- (5) KWCFC employees shall be reimbursed for all out-of-pocket expenses they incurred while conducting audits.
- (6) Except for air transportation, meals, and mileage, expenses shall be reimbursed at actual cost to employees.
- (7) Air fare shall be reimbursed at a rate not to exceed the cost of coach class.
- (8) Meals shall be reimbursed at actual cost not to exceed fifty-five (55) dollars per day.
- (9) Mileage for the use of privately owned auto shall be reimbursed at the rate established in 200 KAR 2:006, Section 7(4)(a).

Section 6. Audits; Insurance Companies.

(1) Upon request, insurance companies shall provide the Funding Commission with data files containing complete policy level detail information for every policy containing workers' compensation coverage in Kentucky with transactions during the audit period, on Form KWCFC-05, Annual Audit and Collections Report, Data Reporting Instructions Insurance Companies.

(2) Insurance companies shall make available to the Funding Commission's auditors the following items:

- (a) Copies of quarterly premiums reports for audit period with backup documentation;
- (b) All documentation required to reconcile the sum of each four (4) calendar quarters to the respective Page 14 totals on the Annual Reports to the Kentucky Department of Insurance, incorporated by reference in 806 KAR 52:010;
- (c) A complete listing of:
 1. Current filings with the Kentucky Department of Insurance;
 2. Kentucky policies containing written premium written off as a bad debt;
 3. Policies written by an association for which the insurance company is providing Kentucky workers' compensation coverage;
 4. Sample policies requested by the Funding Commission;
 5. Deductible policies written nationwide. This list shall contain at a minimum the policy number, insured's name, and policy effective date;
 6. Deductible policies written with Kentucky coverage whose policy effective date is equal to or later than 5/6/93 but not later than 12/31/93. This list shall contain either Kentucky calculated premium, deductible credit, and net deductible premium, or a list of Kentucky claims reimbursed under the deductible plan along with the associated administrative costs; and
 7. Deductible policies written with Kentucky coverage with policy effective dates on or after 1/1/94. This list shall contain Kentucky's standard premium, deductible credit, net deductible premium, any schedule rating credit, as well as all other identifying information allowing a quarterly recalculation and reconciliation; and

(d) All other information necessary to support reported premiums and special fund assessments.

(3) For insurance policies effective prior to October 26, 1987, the Funding Commission shall be furnished with:

- (a) A schedule identifying the assessment rates applied to these policies;
- (b) The dates upon which these rates were first entered into the policy or premium management system;
- (c) The dates upon which these rates became active in the policy or premium management system; and
- (d) A copy of the Kentucky Workers' Compensation Tax and Assessment Excess Collections information.

(4) The Funding Commission shall utilize one (1) or more of the following procedures in the completion of audits:

- (a) Detailed examination of records by policy;
 - (b) Use of audit sampling techniques;
 - (c) Verification and reconciliation to NAIC reports; and
 - (d) Other procedures necessary because of the unique nature of the entity being audited.
- (5) Upon the completion of an audit the Funding Commission shall not reaudit a period unless:

(a) The Funding Commission receives information giving rise to an adjustment of the written premium previously reported to NAIC upon which the Funding Commission had relied; or

(b) The Funding Commission receives information indicating the presence of fraud or other similar circumstance.

Section 7. Audits; Group Self-insurers.

(1) Upon request, group self-insurers shall provide the Funding Commission with data files containing complete policy or member level detail information for all transactions during the audit period on Form KWCFC-06, Annual Audit and Collections Report, Data Reporting Instructions Group Self Insurer.

(2) Group self-insurers shall make available to the Funding Commission's auditors the following items:

(a) Copies of quarterly premiums reports for each audit period with backup documentation;

(b) All documentation required to reconcile the sum of each four (4) calendar quarters to reports filed with the Department of Workers' Claims;

(c) A listing of members to whom coverage was extended for which premium has been written off as a bad debt, along with an explanation of how these bad debts were handled in the reports to the Department of Workers' Claims;

(d) A complete list of sample policies or agreements requested by the Funding Commission; and

(e) All other documents necessary to support reported premiums and assessments.

(3) For insurance years effective prior to October 26, 1987, the Funding Commission shall be furnished:

(a) A schedule identifying the assessment rates applied to these self-insurance years;

(b) The dates upon which these rates were first entered into the policy or premium management system; and

(c) The dates upon which these rates became active in the policy or premium management system.

(4) The Funding Commission shall utilize one (1) or more of the following procedures in the completion of audits:

(a) Detailed examination of records by policy or members' account;

(b) Detailed examination of members' agreements;

(c) Use of audit sampling techniques;

(d) Verification and reconciliation to Department of Workers' Claims' reports; and

(e) Other procedures necessary because of the unique nature of the entity being audited.

(5) Upon the completion of an audit the Funding Commission shall not reaudit a period unless:

(a) The Funding Commission receives information giving rise to an adjustment of the written premium previously reported to the Department of Workers' Claims upon which the Funding Commission had relied; or

(b) The Funding Commission receives information indicating the presence of fraud or other

similar circumstance.

Section 8. Audits; Individual Self-insurers.

(1) Upon request, self-insurers shall provide the Funding Commission with the following:

- (a) Loss experience reports;
- (b) Payroll records;
- (c) All back up documentation request for each audit period; and
- (d) Other information necessary because of the unique nature of the entity being audited.

(2) The Funding Commission shall utilize one (1) or more of the following procedures in completion of audits:

- (a) Detailed examination of all required records;
- (b) Use of audit sampling techniques; and
- (c) Other procedures necessary because of the unique nature of the entity being audited.

(3) Upon completion of an audit the Funding Commission shall not re-audit a period unless:

(a) The Funding Commission receives information giving rise to an adjustment of the information previously reported to the Department of Workers' Claims upon which the Funding Commission had relied; or

(b) The Funding Commission receives information indicating the presence of fraud or other similar circumstance.

Section 9. Audits; Invoice, Protest and Resolution.

(1) The Funding Commission shall send to the assessment payer a notice of any assessment assessed by the Funding Commission.

(2) A summarized invoice consisting of totals for "labor", "travel" and "all other" expenses shall be submitted to the assessment payer as soon as practicable after completion of the audit. An itemized invoice shall be available upon request.

(3)(a) The assessment shall be final if not protested in writing to the Funding Commission within thirty (30) days from the date of notice.

(b) The protest shall be accompanied by a supporting statement setting forth the grounds upon which the protest is made.

(c) 1. Upon written request, the Funding Commission shall extend the time for filing the supporting statement if it is determined that the delay is necessary and unavoidable.

2. The refusal of an extension may be reviewed in the same manner as a protested assessment.

(4) After a timely protest has been filed, the assessment payer may request a conference with the Funding Commission staff.

(a) The request shall be granted in writing stating the date and time set for the conference.

(b) The assessment payer may appear in person or by representative.

(c) Further conferences may be held by mutual agreement.

(5) For those issues not resolved during the conferences described in subsection (4) of this section, the assessment payer may request a conference with the Funding Commission's Board of Directors.

(a) The request shall be granted in writing stating the date and time set for the conference.

(b) The assessment payer may appear in person or by representative.

(6) After considering the assessment payer's protest, including any matters presented at the final conference, the Funding Commission shall issue a final ruling on any matter still in controversy, which shall be mailed to the assessment payer. The ruling shall state:

(a) That it is the final ruling of the Funding Commission and shall generally state the issues in controversy;

- (b) The Funding Commission's position; and
- (c) The procedure for appeal to the Kentucky Claims Commission in accordance with KRS 49.220 and 802 KAR 1:010.
- (7)(a) The assessment payer may request in writing a final ruling any time after filing a timely protest and supporting statement.
- (b) If a final ruling is requested, the Funding Commission shall issue the ruling within sixty (60) days or at the next Board of Directors meeting whichever is later, from the date the request is received by the Funding Commission.
- (8) After a final ruling has been issued, the assessment payer may appeal to the Kentucky Claims Commission pursuant to the provisions of KRS 49.220.

Section 10. Reports.

- (1) Insurance companies, group self-insurers, and individual self-insurers shall file a Quarterly Premiums Report accompanied by the assessment due and payable for each calendar quarter.
- (a) The quarterly premiums report and assessment due and payable shall be received by the KWCFC no later than thirty (30) days following the end of the calendar quarter.
- (b) Receipt of the Quarterly Premiums Report and assessment due and payable shall be considered timely through electronic filing and payment; and prior to January 1, 2020 actual physical receipt by the KWCFC or by postmark of the U.S. Postal Service.
- (2) Insurance companies shall file Form KWCFC-01, Quarterly Premiums Report.
- (3) Employers carrying their own risk shall file Form KWCFC-02, Quarterly Premiums Report.
- (4) Group self-insurers shall file Form KWCFC-03, Quarterly Premiums Report.
- (5) Employers engaged in severance or processing of coal shall file KWCFC-08, Severed Coal Quarterly Assessment Report.
- (6)(a) Every insurance company, group self-insurer, and individual self-insurer providing workers' compensation insurance in Kentucky shall submit to the KWCFC an Annual Audit and Collections Report for each calendar year no later than April 30th following the end of the calendar year.
- (b) These reports shall be submitted to the KWCFC electronically and shall contain the information in the file content format in accordance with the Annual Audit and Collections Report instructions incorporated by reference in Form KWCFC-05, Annual Audit and Collections Report, Data Reporting Instructions Insurance Companies; Form KWCFC-06, Annual Audit and Collections Report, Data Reporting Instructions Group Self Insurer; or Form KWCFC-07, Annual Audit and Collections Report, Individual Self Insurer, as applicable.
- (7) An insurance company or group self-insurer that does not write, receive, or return any Kentucky workers' compensation insurance premium during the calendar year shall complete and return Form KWCFC-04 (Non-writer Statement) to the Kentucky Workers' Compensation Funding Commission, electronically or by mail, 42 Mill Creek Park, Frankfort, Kentucky 40601 no later than April 30th following the end of the calendar year.

Section 11. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "KWCFC-01, Quarterly Premiums Report", 08/2018;
 - (b) "KWCFC-02, Quarterly Premiums Report", 08/2018;
 - (c) "KWCFC-03, Quarterly Premiums Report", 08/2018;
 - (d) "KWCFC-04, Nonwriter Statement", 08/2018;
 - (e) "KWCFC-05, Annual Audit and Collections Report, Data Reporting Instructions Insur-

ance Companies", 08/2018;

(f) "KWCFC-06, Annual Audit and Collections Report, Data Reporting Instructions Group Self Insurer", 08/2018;

(g) "KWCFC-07, Annual Audit and Collections Report, Individual Self-Insurer", 08/2018; and

(h) "KWCFC-08, Severed Coal Quarterly Assessment Report", 08/2018.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Workers' Compensation Funding Commission, 42 Mill Creek Park, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. This material is also available at the Kentucky Workers Compensation Funding Commission Web site <http://www.kwcfc.ky.gov/>.

This is to certify that the executive director has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 342.1224(5). (22 Ky.R. 826; Am. 1308; eff. 12-19-1995; TAm eff. 8-9-2007; 36 Ky.R. 2238; 37 Ky.R. 61; eff. 8-6-2010; 45 Ky.R. 774, 1691, 2093; eff. 2-1-2019.)